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11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE DISTRICT OF NEVADA
13

14 UNITED STATES OF AMERICA,
15 Plaintiff,

3:73-cv-00127-MMD-WGC

16 WALKER RIVER PAIUTE TRIBE,
17 Plaintiff-Intervenor,
18 v.
19

**SCHROEDER GROUP'S REPLY IN
SUPPORT OF MOTION FOR
RECLASSIFICATION OF PRINCIPAL
DEFENDANT SCHROEDER GROUP**

20 WALKER RIVER IRRIGATION
DISTRICT, a corporation, et al.,
21 Defendants.
22

23 COMES NOW, the **Fenili Family Trust** c/o Peter Fenili and Veronica Fenili, Trustees;
24 **Six-N Ranch, Inc.** c/o Richard & Cynthia Nuti, Michael & Nancy Nuti, Ralph E. & Mary E.
25 Nuti, Ralph C. and Mary R. Nuti, and Larry and Leslie Nuti; **John and Lura Weaver Family**
26 **Trust** c/o Lura Weaver, Trustee; **Smith Valley Garage, Inc.** c/o Dan Smith and Shawna Smith;



1 and **Donald Giorgi** (collectively referred to in this litigation as “the Schroeder Group”), by and
 2 through counsel, Schroeder Law Offices, P.C. and its attorneys Laura A. Schroeder, Therese A.
 3 Ure Stix, and Caitlin R. Skulan hereby files its Reply in support of its Motion for
 4 Reclassification of Principal Defendant Schroeder Group. This reply is made and based upon the
 5 following Memorandum of Points and Authorities submitted herein and papers and pleadings on
 6 file in this proceeding.

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 **I. INTRODUCTION**

9 The *Schroeder Group’s Motion for Reclassification of Principal Defendant Schroeder*
 10 *Group* (ECF No. 2681)(“Motion”) requests this court reclassify the Schroeder Group from
 11 “Principal Defendants” to “Defendants” consistent with other parties that filed answers to the
 12 United States’ and Walker River Paiute Tribe’s (collectively “Plaintiffs”) Amended
 13 Counterclaims. The Schroeder Group’s Motion should not be considered under the standard
 14 outlined in Federal Rule of Civil Procedure (“FRCP”) 16(b)(4) as the Motion does not request an
 15 extension or alteration of the litigation schedule. Further, regardless of the standard the Court
 16 applies, the docket in this proceeding demonstrates good cause for reclassifying the Schroeder
 17 Group in addition to negating Plaintiffs’ assertion that such reclassification would prejudice their
 18 claims. As such, reclassification is proper.

19 **II. ARGUMENT**

20 **a. Federal Rule of Civil Procedure 16(b)(4) is Inapplicable, because the** 21 **Schroeder Group is not Requesting Modification of the Litigation Schedule.**

22 FRCP 16(b)(4) does not apply to the Schroeder Group’s Motion, because the Motion
 23 does not request a modification to the litigation schedule. As Plaintiffs note, FRCP 16(b)(4)
 24 succinctly provides, “A *schedule* may be modified only for good cause and with the judge’s
 25 consent.” Fed. Rule Civ. P. 16(b)(4)(Emphasis added). In fact, both the plain language and the
 26 title of the rule, “Modifying a Schedule” evidences its inapplicability to the Schroeder Group’s



1 Motion. The application of FRCP 16(b)(4) occurs when a party requests the modification of the
 2 schedule after missing a preset deadline. *See Hamilton v. Orange Cty. Sheriff's Dep't*, 854 Fed.
 3 Appx. 938, 939 (9th Cir. 2021)(Application of FRCP 16(b)(4) to evaluate reopening the
 4 discovery period); *see also Learjet, Inc. v. Oneok, Inc. (In re W. States Wholesale Natural Gas*
 5 *Antitrust Litig.)*, 715 F.3d 716, 737 (9th Cir. 2013) (Applying FRCP 16(b)(4) to Plaintiff's
 6 request to amend pleading after pretrial scheduling order's deadline for amending the pleading
 7 expired.). That is not the case here.

8 In the present Motion, the Schroeder Group is not seeking to disrupt any of the scheduled
 9 deadlines outlined in the *Order Regarding Discovery and Motion Schedule and Procedure* (ECF
 10 No. 2611)("Scheduling Order"). Rather, the Schroeder Group is seeking to be reclassified out of
 11 the group identified in the Scheduling Order as "Principal Defendants." The Scheduling Order
 12 identifies defendants in two locations. First, in its introductory paragraph listing a group of
 13 parties including: the Walker Lake Irrigation District ("WRID"); the Nevada Department of
 14 Wildlife; Lyon County; Centennial Livestock; Desert Pearl Farms, LLC; Peri Family Ranch,
 15 LLC; Peri & Peri, LLC; Frade Ranches, Inc.; the Schroeder Group; California State Agencies;
 16 and Mono County, California. The Court goes on to abbreviate said parties in a parenthetical
 17 labelling them the "Principal Defendants." Scheduling Order, p. 1. Later in the Scheduling
 18 Order the Court identifies the parties to the action, including "Defendants" which are defined to
 19 include "those parties that filed answers to Plaintiffs' Amended Counterclaims on August 1,
 20 2019 and who continue to be represented by counsel." Scheduling Order, p. 2. This by definition
 21 includes those parties abbreviated as the "Principal Defendants" in addition to Mineral County,
 22 California, the Walker Lake Working Group and a plethora of individuals who filed Answers
 23 and Affirmative Defenses but from whom Plaintiffs evidently do not expect the same level of
 24 participation as the "Principal Defendants." *See Mineral County and Walker Lake Working*
 25 *Group Answer to Second Amended Counterclaim of the Walker River Paiute Tribe* (ECF No.
 26 2549); *see also Mineral County and Walker Lake Working Group Answer to Amended*



1 *Counterclaim of the United States of America for the Water Rights Asserted on Behalf of the*
 2 *Walker River Paiute Tribe*(ECF No. 2548); *See also* Examples of Additional Answers and
 3 Affirmative Defenses filed against United States (ECF Nos. 2525, 2526, 2527, 2528, 2529, 2530,
 4 2531, 2532, 2533, 2534, 2535, 2537, 2538, and 2540); *See also* Examples of Additional Answers
 5 and Affirmative Defenses filed against Walker River Paiute Tribe (ECF Nos. 2510, 2511, 2512,
 6 2513, 2514, 2515, 2516, 2517, 2518, 2519, and 2520).

7 The Schroeder Group's request is for reclassification to be removed from the "Principal
 8 Defendants" listing as identified by parenthetical in the Scheduling Order, leaving them as
 9 "Defendants" as identified in the Scheduling Order. As the Motion contains no request for
 10 alteration of the litigation schedule as outlined in the Scheduling Order, the standard outlined in
 11 FRCP 16(b)(4) is inapplicable and the Court should grant the Schroeder Group's Motion for
 12 Reclassification.

13 **b. The Schroeder Group Demonstrated Good Cause for Reclassification**
 14 **Through Diligence in Discovering Its Incompatibility with the "Principal**
 15 **Defendants" Classification.**

16 Even in the event FRCP 16(b)(4) does apply to the present Motion, the Schroeder Group
 17 should be reclassified, because it diligently discovered its incompatibility with the "Principal
 18 Defendant" classification and demonstrated good cause for reclassification. Rule 16(b)(4)'s
 19 "good cause" standard primarily considers the diligences of the party seeking the amendment.
 20 *See Johnson v. Mammoth Recreations*, 975 F.2d 604, 609 (9th Cir. 1992). The case law applying
 21 the rule discusses the diligence of the requesting party for meeting the deadline for which an
 22 *extension* is requested. *Id.* This further outlines how inapplicable this rule is to the present
 23 motion. However, the Schroeder Group demonstrated diligence prior to requesting the
 24 reclassification. The large majority of the filings submitted on behalf of the Schroeder Group
 25 were created in collaboration with other Principal Defendants, an effort that has decreased the
 26 cost of participation in this litigation. Throughout these collaborative efforts, it has become



1 evident to the Schroeder Group that it does not seek the same level of participation sought by
 2 and expected from other Principal Defendants. Nor is the Schroeder Group in a financial position
 3 to sustain said level of participation without risk to their businesses and livelihoods. While two
 4 years elapsed since the Schroeder Group was first classified as a “Principal Defendant” in the
 5 Scheduling Order, the realization leading to its request of reclassification occurred slowly due to
 6 the relatively low amount of activity in this case during COVID-19.

7 Further, Plaintiffs’ argument that such circumstances were brought on by the Schroeder
 8 Group due to the filing of substantial Answers is without merit. This is demonstrated by the
 9 numerous other Answers also forwarding legal and factual allegations opposing Plaintiffs’
 10 claims from individuals who Plaintiffs do not expect participation at the same level as Principal
 11 Defendants. It is important to note that such individuals’ participation is significantly lower due
 12 to their interests also being represented by WRID. The same is the case for the Schroder Group,
 13 who now requests that its participation and classification be reflective of other defendants in
 14 similar circumstances. As such, the Schroeder Group has been diligent in determine the level of
 15 participation it wishes to take in this litigation and has demonstrated good cause for
 16 reclassification outside of the “Principal Defendant” group.

17 **c. Plaintiffs Are Not Prejudiced by Reclassification, because this Litigation**
 18 **Contains a Plethora of Defendants in the Same Position as the Schroeder**
 19 **Group from Whom Plaintiffs Do Not Expect Heightened Participation.**

20 Plaintiffs fail to demonstrate how the Schroeder Group’s reclassification from the
 21 “Principal Defendants” would prejudice their case. Plaintiffs contend that the Schroeder Group’s
 22 Answers remain “substantial obstacles” to Plaintiffs’ water right claims. However, if the
 23 Schroeder Group’s Answers were such “substantial obstacles” it stands to reason that the
 24 Plaintiffs would seek the same level of participation from all *fourteen* defendants with
 25 *substantially identical* Answers to the Plaintiffs’ claims, but who were not listed as “Principal
 26 Defendants.” The Plaintiffs’ actions have demonstrated that the participation of such defendants



1 is not necessary to build their case yet have not distinguished what about the Schroeder Group's
2 classification as a "Principal Defendant" is so vital to this litigation.

3 Additionally, the status of an ongoing and unresolved discovery dispute is irrelevant to
4 the Schroeder Group's classification in this litigation. Further, the Schroeder Group's Motion in
5 no way indicates that it intends to withhold material Plaintiffs have requested but for which there
6 is debate whether they fall under the scope of discovery if: (1) Plaintiffs and the Schroeder
7 Group can reach an agreement through the meet and confer process; or (2) the Court determines
8 such materials are discoverable pursuant to a Motion to Compel. Regardless, the discovery
9 dispute is a distinct issue and should not be contemplated with this Motion.

10 In conclusion, Plaintiffs fails to demonstrate how the Schroeder Group's reclassification
11 to "Defendant" consistent with numerous other "Defendants" in similar circumstances will
12 prejudice their case. Nor have Plaintiffs shown how a wholly distinct discovery dispute should
13 dissuade the Court from reclassifying the Schroeder Group. As such, the Plaintiffs' contention
14 that reclassification of the Schroeder Group will prejudice their case is disingenuous at best and
15 the Court should grant the Motion.

16 **d. The Schroeder Group's Answers can be Considered Co-Extensively with**
17 **Remaining Principal Defendant's Answers.**

18 Lastly, the Schroeder Group does not oppose the Court considering its Answers co-
19 extensively with the Answers of the Principal Defendants. As noted above, numerous Answers in
20 this litigation, including those filed outside of the Principal Defendant group, are substantially
21 identical. The Schroeder Group does not intend to rehash issues, claims, or defenses that (1)
22 have been decided by the court; or (2) will be decided through argument between Plaintiffs and
23 Principal Defendants. To do so would be against the spirit of the Schroeder Group's request,
24 which is fueled by a desire for a reduced level of participation in this litigation.

25 However, the Schroeder Group should not be required to withdraw its Answers. First,
26 the provision of the order cited in Plaintiffs' response is not applicable to this scenario. The



1 relevant provision states that, “After August 1, 2019, any party who has not answered as
 2 provided herein may only do so upon leave of court.” *Stipulated Scheduling Order and*
 3 *Discovery Plan*, p. 3 (ECF No. 2437). The Schroeder Group did file an answer before August 1,
 4 2019. Thus, the plain meaning of the provision does not apply to it. Additionally, as noted
 5 above, numerous Answers exist on file for Defendants with a lesser level of participation. The
 6 United States has not requested those individuals withdraw their Answers. Where is the logic or
 7 justice in requiring the Schroeder Group to do so?

8 This motion does not admit or stipulate that the Schroeder Group will not find it
 9 necessary to seek leave of Court, if the Court deems leave appropriate, to participate at a
 10 heightened level in the future. However, such a finding by the Court would arguably set the
 11 precedent for any other party with an Answer, not categorized as a “Principal Defendant”, and
 12 seeking participation pursuant to their Answer. The Schroeder Group is concerned that such a
 13 precedent would create an additional barrier to justice for such parties in a case that is already
 14 cost prohibitive to most of the individuals directly affected by Plaintiffs’ claims. Perhaps such an
 15 additional barrier is Plaintiffs’ goal. The Schroeder Group encourages the Court to grant its
 16 Motion absent any such additional barriers for the Schroeder Group and other defendants in this
 17 litigation not classified as “Principal Defendants.”

18 **III. CONCLUSION**

19 For the foregoing reasons, the Schroeder Group respectfully requests the Court reclassify
 20 the Schroeder Group and no longer require it to participate and coordinate as a “Principal
 21 Defendant” as defined in this litigation.

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1 DATED this 14th day of December, 2021.

2 SCHROEDER LAW OFFICES, P.C.

3
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CERTIFICATE OF SERVICE

I certify that on December 14, 2021 I caused a copy of the foregoing **SCHROEDER GROUP'S REPLY IN SUPPORT OF MOTION FOR RECLASSIFICATION OF PRINCIPAL DEFENDANT SCHROEDER GROUP** to be served automatically on all Represented Parties through the District Court of Nevada's CM/ECF system and automatically served by the Court on all unrepresented parties who consent to receive service by email.

Dated this 14th day of December, 2021.

/s/ Laura A. Schroeder

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